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CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 260.

IN THE MATTER

of

UNITED CIGAR STORES COMPANY OF AMERICA,

Debtor,

CITY BANK FARMERS TRUST COMPANY,
Assignee of Florence H. Bugbee,

Petitioner,

against

IRVING TRUST COMPANY, as Trustee of the Estate of the above-named Debtor, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI.

SUPPLEMENTAL BRIEF IN OPPOSITION

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This supplemental brief is filed only because the petitioner has filed a "reply brief" in which it charges that our brief contained erroneous or misleading statements of fact. These occur in the paragraphs of the "reply brief"

numbered (1), (2) and (7) and are here answered *seriatim*.

(1) *As to the questions presented by the petition:* In our original brief herein we did not and could not anticipate the questions under Section 77B sought to be raised by the petition in the *Kuehner* case (Docket No. 354), which was not filed until *after* our brief in this case was served. The Trustee's position with respect to those questions will be set forth in its brief in opposition to the *Kuehner* petition. For a statement of the sole questions presented in this case we respectfully refer the Court to pages 3 and 4 of our original brief.

(2) *Other claims affected by this case:* We stand on the statement in our original brief (p. 6) that of the other landlords' claims being litigated in this proceeding there are not more than 7, aggregating in amount about $125,000, which would be affected by the granting of a writ in this case. As to the bulk of the claims in litigation, petitioner's counsel themselves urged a distinction upon the court below in that, as contrasted with petitioner's assignor, such claimants had

> "*by express agreement* with United and others voluntarily extinguished all liability of United and its estate on the lease".

The only other landlords' claims still pending are those where, as in the case of the *Voigt* claim represented by the *amici curiae*, the landlord claimant had terminated the lease *before* the trustee in bankruptcy had exercised its election to adopt or reject. Such a claimant can hardly establish

a claim "for injury arising from the rejection" of a lease, at least not under the theory advanced by this petitioner whose assignor did not terminate until *after* rejection.

(7) *The Special Master's finding on restoration:* Any doubts as to the force of the Special Master's finding on the subject of the restoration of the Debtor's alterations made by the petitioner's assignor can best be settled by reference to the Special Master's own language (R. 41, 42):

> "As bearing on the Landlord's present contention, it might be well to note that she filed in the Bankruptcy proceeding, a claim for $1980.99 for alleged expenditures in restoring a party wall and closing up a common entrance in the demised premises, based upon the United's agreement to restore the demised premises *at the expiration of the term.* She received 50% dividends in the Bankruptcy proceeding, and the stipulation herein shows that this claim is also asserted in this Reorganization proceeding. Naturally, the entire basis of this claim for restoration is the expiration of the lease. The Trustee may well point to it, as showing that the Landlord, prior to the enactment of Section 77-B, by her re-entry and reletting of the premises as aforesaid, considered that the lease terminated and expired. It is significant also to note that the lease contained no provision giving the Landlord the right to re-enter for the purpose of reletting for the account of the Tenant.
>
> "All in all, the conclusion is irresistible from the Landlord's entire course of conduct, after the adjudication in bankruptcy herein on August 29th, 1932, that she in fact regarded the lease terminated, and that she reentered the premises and resumed control thereof solely for her own account."

Inasmuch as the other points dealt with in the reply brief involve questions of law, we rest as to them on the arguments in the Trustee's original brief.

Respectfully submitted,

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